STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

Enbridge Pipelines (Illinois), L.L.C.,	)	
	)	
Application Pursuant to Section 8-503, 8-509 and	)	07-0446
15-401 of the Public Utilities Act/The Common	)	Upon Reopening
Carrier by Pipelines Law to Construct and Operate	)	
a Petroleum Pipeline and When Necessary to Take	)	
Private Property As Provided by the Law of	)	
Eminent Domain.	)	

PLIURA INTERVERNORS RESPONSE TO APPLICANT'S MOTION TO STRIKE PORTIONS OF PLIURA INTERVENORS' TESTIMONY

NOW COME the Intervenors herein who throughout these proceedings for convenience purposes have been identified as "Pliura Intervenors", by and through their mutual counsel, Thomas J. Pliura, M.D., J.D., and respectfully offer the following Response to the Motion by Applicant to Strike "Exhibit B" from the testimony of Intervenors Carlisle Kelly.

Pliura Intervenors offered the direct testimony of Carlisle Kelly in opposition to Applicant's Motion to Amend the 07-0446 Certificate in Good Standing. The testimony was supported by two exhibits. The first was a copy of the July 31, 2013 "Order on Petition for Declaratory Order" issued by the Federal Energy Regulatory Commission in Docket OR13-19-000. The second was a written statement entitled "news release" issued by Applicant's parent organization, Enbridge, Inc., on June 5, 2013, and posted on Applicant's parent organization's website at http://www.enbridge.com/MediaCentre/News.aspx?yearTab=en2013&id=1728157. Applicant waived cross-examination of Kelly and takes no issue with the FERC order at Exhibit A. However, Applicant seeks to strike from the record Exhibit B. In support, it cites a single section of the Administrative Code and a single appellate court case. But as shows below,

Applicant has misstated the applicable section of the code and has misunderstood or misrepresented the holding of the only case it cites.

83 Ill.App.Code 200.610(b)

Applicant asserts at paragraph 2 of its motion that [i]t is well-established that in contested cases before the Commission, 'the rules of evidence and privilege applied in civil cases in the circuit courts of the State of Illinois shall be followed'". Respectfully, Applicant should have read the entire subsection. In actuality, the applicable subsection of the code reads,

> This subsection applies to all proceedings except those under the ICTL. In contested cases, and licensing proceedings, the rules of evidence and privilege applied in civil cases in the circuit courts of the State of Illinois shall be followed. **However, evidence not admissible under such rules may be admitted if it is of a type commonly relied on by reasonable prudent persons in the conduct of their affairs.** [5 ILCS 100/10-40] Objections must be made at hearing to preserve them on appeal. Evidence may be received orally or in writing. (Emphasis added)

Applicant ignores this exception to the general rule because it entirely negates the basis for its motion. When reading the full regulation and the statute upon which it is based, it is clear that Applicant's motion is frivolous. The document is question is a written statement issued by Enbridge, a publicly traded company, on its own website. For Applicant to suggest herein that Enbridge's own public disclosures are so unreliable that the statements should not be considered "the type of evidence commonly relied on by reasonable prudent persons in the conduct of their affairs" is ridiculous. The nature of the exhibit (a written statement issued by Enbridge and posted for public viewing on its own website) is clearly the type of evidence envisioned by the exception described in 83 Ill.App.Code 200.610(b) that Applicant conveniently omitted from its motion.

McCall v. Devine

Secondly, even a cursory review of the lone case cited by Applicant in support of its motion demonstrates that it is entirely inapplicable. Even if 83 Ill.App.Code 200.610(b) did not include the exception that Applicant omitted from its motion, *McCall* offers no support because *McCall* dealt with newspaper articles and not written statements issued by the party. *McCall* includes a well-reasoned explanation as to why newspaper articles are inadmissible.

> It is very obvious that factual matters should not be proven by newspaper reports of occurrences. While there is an inclination on the part of the general public to accept newspaper stories at face value-and the quality of the reporting should be careful enough that such reliance is generally justified-the fact remains that news stories are frequently based on the hearsay statements of others, or on the statements of bystanders, witnesses to the occurrence, public officers, and other informants. Because of this they are often, if not notoriously, apt to be inaccurate. This is not always due to careless reporting or slanting or over-emphasis, but rather to the pressure of haste and to the inherent fact that the news story does not purport to present the results of careful investigations, or at least that it purports to report only, or mostly, what others have said about the matter." R. Steigmann, Illinois Evidence Manual § 14:28, at 365 (2d ed. 1995). *McCall v. Devine*, 334 Ill. App. 3d 192, 203,777 N.E.2d 405, 415, 267 Ill. Dec. 602, 612(1st Dist.2002).

Arguably, newspaper articles are admissible in contested ICC proceedings because they are a type of record commonly relied on by reasonable prudent persons in the conduct of their affairs. The Administrative Law Judge need not address this issue, however, because Exhibit B to the Kelly testimony **is not** a newspaper article. Exhibit B is, instead, a written statement issued by Applicant's parent organization and posted on the Enbridge website at http://www.enbridge.com/MediaCentre/News.aspx?yearTab=en2013&id=1728157. It is not a hearsay report by an independent news organization that may or may not have its facts straight. It is, instead, a written statement issued by Enbridge, itself. *McCall v. Devine* offers no support whatsoever for the assertion that Enbridge's own publicly disclosed written statements are inadmissible hearsay because they are inherently, "apt to be inaccurate" due to "careless reporting or slanting or over-emphasis" or "because of the pressure of haste and to the inherent

fact that the news story does not purport to present the results of careful investigations". Though Enbridge may dislike having its own statements used against it, Applicant has wholly failed to offer any support for its motion to strike.

WHEREFORE, Pliura Intervenors respectfully pray the honorable Administrative Law Judge deny Applicant's motion to strike.

Respectfully submitted this 8th Day of October, 2014.

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PROOF OF SERVICE

The undersigned certifies that on this 8th day of October, 2014 he served a copy of the foregoing document together upon the individuals on the attached service list, by electronic mail.

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